IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.MC.No. 1556 of 1996

CC.902/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA

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PETITIONERS/ACCUSED 1 AND 2:

1. SARASU GEORGE, W/O GEORGE MATHEW,
SANKARAMANGALATHU HOUSE
KANJIKUZHI, KOTTAYAM-686 004.

2. MRS. FENN, W/O LATE BAKER FENN
G4, CRYSTAL MANOR, CITIZENS ROAD,
COCHIN-18.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.ALAN PAPALI

RESPONDENTS/COMPLAINANT:

1. GEORGE VARKEY
SANKARAMANGALATU HOUSE,
PALIAKKARA MURI, THIRUVALLA VILLAGE

2. STATE OF KERALA (S.I. OF POLICE)
THIRUVALLA, CRIME NO.148/94
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM

BY ADV. SRI.K.P.VIJAYAN
SRI.BOBY MATHEW
PUBLIC PROSECUTORSRI.AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 1556 of 1996

ORDER ON CRL.M.P.1124/2002
IN
CRL.M.C.1556 OF 1996

DISMISSED

SD/-
A.K.BASHEER, JUDGE

28.11.2007

A.K.BASHEER, J.

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Crl.M.C.No.1556 OF 1996

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Dated this the 28th day of November 2007

ORDER

This petition filed under Section 482 of the Code of Criminal Procedure, is at the instance of the accused in C.C.902/95 on the file of the Judicial Magistrate of First Class, Thiruvalla. Petitioners seek to quash the above proceedings pending against them before the court below.

2. Respondent no.1/complainant has filed the above complaint alleging offences under Sections 447, 427 and 114 Indian Penal Code. It is contended by the petitioners that the court below ought not to have entertained the protest complaint, since it was filed belatedly. It is pointed out that the learned Magistrate had accepted the refer report submitted by the police in connection with the same incident and closed the case on December 5, 1994. The present protest complaint was preferred on July 6, 1995 viz. after a lapse of seven months. Petitioners have also raised a contention that the allegations contained in the complaint, a copy of which is on record as Annexure-I, are

totally trivial, frivolous and fictitious. Pendency of the civil case between the parties also ought to have been taken note of by the learned Magistrate before issuing process to the petitioners.

3. In my view, petitioners have to urge all these and other contentions available to them before the learned Magistrate before whom the case is pending. It is undoubtedly open to the petitioners to plead for a discharge. With that liberty reserved in favour of the petitioners, this Crl.M.C. is closed without considering the merit of any of the contentions raised by them. If the petitioners make a plea for a discharge as provided under law, the same shall be considered by the learned Magistrate and appropriate decision thereon shall be taken as a preliminary issue.

Crl.M.C. is closed with the above direction.

(A.K.BASHEER, JUDGE)

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